

**CITY OF MORGAN HILL
JOINT SPECIAL AND REGULAR CITY COUNCIL AND
SPECIAL REDEVELOPMENT AGENCY MEETING
MINUTES - NOVEMBER 7, 2001**

CALL TO ORDER

Mayor/Chairman Kennedy called the special meeting to order at 6:33 p.m.

ROLL CALL ATTENDANCE

Present: Council/Agency Members Carr, Chang, Sellers, Tate and Mayor/Chairman Kennedy

DECLARATION OF POSTING OF AGENDA

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

City Council Action

CLOSED SESSION:

City Attorney/Agency Counsel Leichter announced the following closed session items:

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Significant Exposure/Initiation of Litigation

Authority: Government Code Section 54956.9(b) & (c)

Number of Potential Cases: 3

2.

CONFERENCE WITH LEGAL COUNSEL - POTENTIAL LITIGATION & CONFERENCE WITH REAL PROPERTY NEGOTIATOR

Legal Authority: Government Code 54956.8 & 54946.9(c)

Property: APN 779-05-010 & 010; 13 865 Monterey Road (46.96 acres)

Negotiating Parties:

For City/Agency: City Manager/Executive Director; Public Works Director, Director of Business Assistance & Housing Services; City Attorney/Agency Counsel; Special Counsel

For Property Owners: William Sing and Young Kay Mock; The GFI Company

Closed Session Topic: Acquisition of Real Property

3.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Authority: Government Code section 54956.9(a)

Name of Case: Hacienda Valley Mobile Estates v. City of Morgan Hill et al.

Case No: C 01-20976 PVT, United States District Court, Northern District of California

4.

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Pursuant to Government Code 54957
Public Employee Performance Evaluation: City Attorney
Attendees: City Council

City Council and Redevelopment Agency Action

5.

CONFERENCE WITH LEGAL COUNSEL - POTENTIAL AND EXISTING LITIGATION: CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Legal Authority:	Government Code 54956.8 & 54956.9(a) & (c) (1 potential case)
Real Property(ies) involved:	APN 728-31-007 & 008; 25.50 acres located on the southwesterly side of Cochrane Road (St. Louise Hospital property)
City Negotiators:	Agency Members; Executive Director; Agency Counsel; F. Gale Conner, special counsel; Rutan & Tucker, special counsel
Case Name:	San Jose Christian College v. City of Morgan Hill
Case Numbers:	Santa Clara County Superior, No. CV 799179; USDC Northern California No. C01-20857 RMW
Closed Session Topic:	Potential Existing Litigation/Real Estate Negotiations

6.

CONFERENCE WITH LEGAL COUNSEL - REAL PROPERTY NEGOTIATOR

Legal Authority:	Government Code 54956.8
Real Property Involved:	17.58 acre parcels located on the eastside of Condit Road, bound by Condit Road, Tennant Avenue, Barrett Avenue and Murphy Avenue (APN 817-13-017)
Negotiating Parties:	
For City/Agency:	City Manager/Executive Director; City Attorney/Agency Counsel; Director of Business Assistance & Housing Services
For Property Owners:	Virginia Lomanto Trustee
Closed Session Topic:	Acquisition of Real Property

PUBLIC COMMENT

Mayor/Chairman Kennedy opened the closed session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor/Chairman Kennedy adjourned the meeting to closed session at 6:35 p.m.

RECONVENE

Mayor/Chairman Kennedy reconvened the meeting at 7:03 p.m. He indicated that the City Council/Redevelopment Agency concluded a brief closed session that will be continued later on this evening's agenda, noting that no action has been taken on the closed session items.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

At the invitation of Mayor/Chairman Kennedy, Robert Benich led the Pledge of Allegiance.

INTRODUCTIONS

The introduction of Nancy Harris, Office Assistant I - Recreation Division, was deferred to a future meeting.

PRESENTATION

The presentation of a flag flown over the World Trade Center was deferred to a future meeting.

CITY COUNCIL REPORT

Mayor Kennedy reported that there is an agreement with BART to extend services from Fremont (Alameda County) to San Jose. He indicated that he chairs the Transit Planning and Operations Committee of the Valley Transportation Agency (VTA) as one of his outside agency assignments. Another outside agency assignment is the Santa Clara County Cities Association, noting that a meeting will be held tomorrow evening in which Council Member Chang agreed to attend as the alternate Council Member to this committee.

CITY MANAGER'S REPORT

City Manager Tewes indicated that he did not have a report to present this evening.

CITY ATTORNEY'S REPORT

City Attorney Leichter stated that the Monthly Litigation Summary was distributed to the City Council this evening.

CERTIFICATE OF RECOGNITION

Mayor Kennedy presented a Certificate of Recognition to Debbie Heinsohn for Dennis Heinsohn, Boy Scout Leader (Posthumously) for his many years of dedicated service to the community as a Boy Scout leader, volunteer for the Family First Baptist Church, volunteer at the Gilroy Hospital and Henry Coe Park Association dinner as well as many other community functions.

OTHER REPORTS

Jay Jaso presented the staff report on the City's participation in the 2001 "Taste of Morgan Hill" event.

Director of Business Assistance and Housing Services Toy identified the committee members who planned the City's informational booth at the Taste of Morgan Hill event as follows: Jay Jaso/Pam Brozone co-chairs; Mori Struvi, Ray Dellanini, Debbie Simon, Rick Rodriguez, Pat Wilkins, Jim Rowe, Karen Lengsfeld, Tina Reza, and Therese Lugger.

PUBLIC COMMENT

Mayor Kennedy opened the floor to public comments for items not appearing on this evening's agenda.

Robert Benich, resident of Morgan Hill, speaking as a private citizen, noted that the City Council has stated that the City is to engage and foster energy saving measures as a result of the ongoing energy crises. He felt that inflation and diminishing fossil reserves will cause energy crises to continue to increase in future years. He noted that Morgan Hill is located in a geographic area that has an abundance of natural resources such as sunshine that can be harnessed for usable energy. He requested that the City direct the chosen architect to integrate solar panels into the building design so that it may be done from the very beginning both economically and aesthetically pleasing manner.

No other comments were offered.

City Council Action

CONSENT CALENDAR:

Mayor Kennedy noted that there is a request to address agenda item 12. Therefore, he would suggest that it be pulled from the consent calendar.

Council Services and Records Manager Torrez requested that item 3 and 13, Council Member Tate requested that item 5 and Council Member Chang requested that item 7 be removed from the Consent Calendar.

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously **approved** Consent Calendar Items 1, 2, 4, 6, 8-11, and 14 as follows:*

1. **APPROPRIATION OF FUNDS TO PURCHASE A POLICE K-9**

Action: **Appropriated** \$7,500 from the Asset Seizure Fund (225) for the Purchase of a New Police K-9.

2. **BI-ANNUAL VACANCY RATE SURVEY**

Action: **Established** the Bi-annual Vacancy Rate for October 2001 as Recommended by the Planning Commission.

4. **2001 HAZARDOUS VEGETATION MANAGEMENT PROGRAM - Resolution No. 5532**

Action: **Adopted** Resolution No. 5532, Declaring Hazardous Vegetation to Be a Nuisance and Setting December 5, 2001 as the Date for the Public Hearing Regarding Hazardous Vegetation Abatement.

6. **VACATION OF A PORTION OF A PUBLIC UTILITY EASEMENT ON LOT 7, TRACT NO. 6034 - Resolution No. 5533**
*Actions: 1) **Adopted** Resolution No. 5533, Declaring Summary Vacation of a Portion of a Public Utility Easement on Lot 7, Tract No. 6034, 872 English Walnut Court; and 2) **Directed** the City Clerk to File a Certified Copy of the Resolution in the Office of the County Recorder of the County of Santa Clara.*
8. **ACCEPTANCE OF PUBLIC IMPROVEMENTS FOR MIYASAKA - Resolution No. 5534**
*Actions: 1) **Adopted** Resolution 5534, Accepting the Public Improvements for Miyasaka; and 2) **Directed** the City Clerk to File a Notice of Completion with the County Recorder's Office.*
9. **AWARD OF PROFESSIONAL SERVICES CONTRACT FOR DESIGN OF THE TENNANT AVENUE WIDENING, PHASE III PROJECT**
*Action: **Approved** the Proposal from MH Engineering Co., Inc. in the Amount of \$33,800 and **Authorized** the City Manager to Execute a Professional Services Agreement for Design Services for the Tennant Avenue Widening, Phase III Project.*
10. **SUBDIVISION APPLICATION SD 01-05: E. CENTRAL - MORGAN LANE**
*Action: **Took No Action**, Thereby Concurring with the Planning Commission's Decision Regarding Approval of the Subdivision Map.*
11. **SURPLUS COMMUNITY DEVELOPMENT VEHICLES**
*Action: **Declared** Vehicles as Surplus and **Authorized** Sale at Auction.*
13. **JOINT SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES FOR OCTOBER 17, 2001**
*Action: **Approved** Minutes as Written.*
14. **SPECIAL CITY COUNCIL AND SPECIAL PLANNING COMMISSION MEETING MINUTES FOR OCTOBER, 29, 2001**
*Action: **Approved** Minutes as Written.*
3. **AMEND ADOPTED POLICY RELATING TO CITY COUNCIL'S ORDER OF BUSINESS**

Council Services and Records Manager Torrez requested that the City Council approve the recommended amendment to Section 5.1.E of the Policy to include the following: Closed Session (6:30-7:00 p.m., *as deemed appropriate*). This amendment would allow City Council and staff flexibility with scheduling future closed session items.

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (5-0) **Approved** Amendment to Policy Regarding City Council Order of Business, amending Section 5.1.E as recommended by staff.*

5. **APPROVAL OF CONTRACT WITH DOWNEY, BRAND, SEYMOUR & ROHWER,**

LLP, AND LAW OFFICES OF STEPHAN C. VOLKER

Council Member Tate requested that the City Attorney provide additional information in terms of the specific funding for the two different actions.

City Attorney Leichter stated that the City Council authorized the filing of two lawsuits: 1) challenging the redistricting action by the State Legislature; and 2) continuation of the appeals of the Metcalf Energy Center approvals by the Bay Area Air Quality Management District, the California Energy Commission and other state agencies. She noted that both are specialized legal actions. Staff is recommending the retention of outside counsel. She said that for the first case, the estimated fees for the petition to the California Supreme Court are approximately \$50,000 (staff is requesting this contract funding amount). Because there are so many actions being filed challenging the Metcalf actions, staff would like to monitor compliance. She said that although the Council would be authorizing a higher amount this evening, staff would be executing a contract with Mr. Volker for only \$25,000, reporting back to the City Council as the milestones are achieved to let it know the status of the three separate actions challenging Metcalf and to determine whether the City Council wants to continue to expend funds in this regard. By placing this total amount for Council consideration, it would ensure that staff does not have to return with additional funding requests. In addition, the extra \$10,000 is a contingency fund to be used for either the redistricting law suit and/or the Metcalf proceedings.

Actions: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (5-0): 1) **Authorized** Staff to Execute Contracts for Legal Services with Downey, Brand, Seymour & Rohwer, LLP, and Law Offices of Stephan C. Volker, and 2) **Authorized** Transfer of \$110,000 from General Fund to City Attorney's Budget for Cost of Additional Legal Services.*

7. **APPROPRIATE \$35,000 TO REIMBURSE MORGAN HILL UNIFIED SCHOOL DISTRICT (MHUSD) FOR PUBLIC IMPROVEMENTS ADJACENT TO BRITTON MIDDLE SCHOOL**

At the request of Council Member Chang, City Manager Tewes presented the staff report. Council Member Chang inquired whether there was an exchange in funds with the School District and the City?

City Manager Tewes responded that this is an instance in which the School District awarded a public improvement contract for a series of improvements which included installation of sidewalks and other improvements at Britton Middle School. The School District issued a contract, noting that the City agreed to reimburse the School District \$35,000 for the sidewalk portion of improvements.

Council Member Chang noted that when the Morgan Hill Elementary School site was demolished, the City billed the School District \$25,000. She inquired whether the City could pay the School District \$10,000 versus giving the School District \$35,000 as this would result in a "breaking even" situation?

City Manager Tewes stated that a formal agreement does not exist to specify an alternative procedure

for payments. He noted that these are two different transactions. He stated that the School District agreed to pay \$25,000 for the demolition of the old Morgan Hill School and that this work has been completed. The City has sent the School District an invoice requesting payment for the demolition. The School District is before the City Council requesting reimbursement for a different project (installation of sidewalks at Britton Middle School).

Council Member Chang inquired whether staff's recommendation can be modified to prevent increasing the City's accounting costs?

Council Member Carr felt that in the future, the City could consider shared accountings. As both entities have issued invoices for reimbursement of dollars, he recommended that the Council proceed with staff's recommended action.

Action: *On a motion by Council Member Carr and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Appropriated** \$35,000 from the Unappropriated Street Fund Balance for This Reimbursement.*

12. GENERAL PLAN IMPLEMENTATION PROGRAM

At the request of Mayor Kennedy, Director of Community Development Bischoff presented the staff report.

Mac Rossi, Jackson Oaks Drive, stated that he received a letter from many members of the Jackson Oaks Homeowners Association pertaining to traffic problems on Jackson Oaks Drive. He referred to Page 132 of the agenda packet, Section 2.6, Circulation Element, relating to traffic calming. He said that the letter addressed the homeowners' needs and existing problems. He noted that the Public Works Department is in the process of retaining a consultant within the next four weeks to study traffic calming techniques, with the main issue being the widening of Murphy Avenue. He requested that a portion of the funding be set aside to make Jackson Oaks Drive a high priority in order to improve existing traffic problems.

Mr. Bischoff stated that staff has had discussions with the traffic consultant regarding the scope of work for the Murphy Avenue project and that it is anticipated that the work will begin in approximately one month. He sees the Murphy Avenue corridor and traffic movement as a different issue than that of Jackson Oaks Drive. He indicated that another study could be performed for the Jackson Oaks Drive area but that funding is not in place for a second study this fiscal year. He stated that it is anticipated that it would cost approximately \$30,000 to conduct a traffic calming study in the Jackson Oaks area that would take approximately three months to complete.

City Manager Tewes informed the City Council that this was a subject of conversation at time of General Plan adoption. The City Council indicated that the City would make it clear that these were two different studies and that the City Council indicated that the Murphy Avenue corridor was the higher of the two priorities.

Mayor Pro Tempore Sellers asked if it would be feasible to have the same consultant conduct two separate studies at the same time to expedite them. If so, how would the City fund the second study?

Director of Public Works Ashcraft responded that a second study could be conducted this year subject to funding availability. He noted that the Jackson Oaks Drive area is listed as a medium priority in the workplan before the City Council. He felt that the timing would be shorter than the Murphy Avenue study but that he was not sure as to the cost for the study. He felt that it made sense to use the same consultant to perform the second study depending on expertise and fee. He said that staff would be seeking other proposals. It was his belief that Mr. Rossi was hopeful that the plan would identify traffic calming techniques. Staff explained to Mr. Rossi that the study would be city-wide regarding concepts and that it would be up to the City Council to adopt policies city-wide and prioritize the projects and funding.

Council Member Tate noted that Jackson Oaks Drive does not have a level part except at the apex at the top. He said that Jackson Oaks Drive is a specific problem and that he does not believe that there were any other streets in Morgan Hill similar to Jackson Oaks Drive, therefore, there are no general calming techniques when you are talking about a hill or road that does not have flat spots whatsoever. He felt that a unique study would need to be performed.

Mr. Ashcraft stated that the study would be unique in terms of the geology of the area but not unique in terms of the classification of the street or the number of houses on the street as it is a residential neighborhood. He noted that there are many residential neighborhoods throughout the city where property owners are concerned about the speed of traffic. These residents would be interested in anything that the City could do to slow traffic down. Staff is not recommending that the City look at Jackson Oaks uniquely but that it be studied as a city-wide program much like other cities have done. Staff recommended that traffic be studied city-wide and then focus on specific problem areas. He informed the City Council that he and Captain Sullivan attended a Jackson Oaks Homeowners Association meeting last month, noting that there were split opinions on the board of the Homeowners Association as to whether any type of traffic calming techniques would be supported. Staff advised the board that staff would not be proposing any traffic calming techniques without a thorough plan returning to them for their review and recommendation. He indicated that there are strong feelings in that neighborhood as to the types of traffic calming techniques that would be supported.

Council Member Tate stated that if the City conducts a general traffic study, he did not believe that it would solve the Jackson Oaks Drive problem based on its slope. He said that the City can find several traffic calming techniques acceptable on flat roads but would not be acceptable to Jackson Oaks Drive. He reiterated that it was his belief that a special study was warranted on Jackson Oaks Drive due to its geography.

Mr. Rossi indicated that he researched this issue and visited several cities to see what they have to offer as the city and the police department were unable to come up with a decision. He visited the City of San Jose and many other cities in the bay area. He looked at the issue in terms of emergency. He informed the City Council that the homeowners' association is split on the solution of installing speed bumps. It was his understanding that speed bumps cannot be installed due to the area's elevation. The fire department has indicated that approximately 80% of the emergencies to Jackson Oaks Drive are medical, therefore, you do not want to slow down the medical response team. When the homeowners heard that the City was seeking traffic consultants, they were hoping that the City would help study the situation and that the City would seek outside help to come up with suggestions.

City Manager Tewes indicated that one of the things that staff would be looking at is the kinds of techniques that would work under different circumstances. He stated that it is his hope that the study would give a city-wide inventory of techniques that will work, tell the city under what circumstances in Jackson Oaks traffic calming techniques will work, noting that there are other neighborhoods on hills, and then identify a set of criteria on how the City will work with neighborhoods to solve problems when there is not a consensus on the technique to be applied.

No further comments were offered.

Mayor Kennedy suggested that the Jackson Oaks area be changed to a high priority and that staff ask the consultant to look at some of the more critical areas within the City, especially the areas that have historically had problems. He indicated that there are many city streets that have problems with speeding traffic, particularly exacerbated by the back up of traffic on Highway 101. He said that the City needs to be careful not to focus on just one neighborhood as the City has to focus on all areas that have problems.

Action: *On a motion by Council Member Tate and seconded by Council Member Chang, the City Council unanimously (5-0) **Adopted** the Implementation Program by Minute Action, amending Section 2.6 of the Circulation Element, making the Jackson Oaks area a high priority.*

City Council & Redevelopment Agency Action

Action: *On a motion by Council/Agency Member Tate and seconded by Mayor Pro Tempore/Agency Member Sellers, the City Council/Agency Commission **Approved** Consent Calendar items 15 and 16 as follows:*

15. **SPECIAL AND REGULAR REDEVELOPMENT AGENCY AND SPECIAL CITY COUNCIL MEETING MINUTES FOR OCTOBER, 24, 2001**

Action: ***Approved** Minutes as Written.*

16. **SPECIAL REDEVELOPMENT AGENCY AND SPECIAL CITY COUNCIL MEETING MINUTES FOR OCTOBER, 24, 2001**

Action: ***Approved** Minutes as Written.*

ADJOURNMENT

Action: *It was the consensus of the City Council/Agency Commission to **adjourn** to a the Special Redevelopment Agency meeting at this time (7:46 p.m.).*

RECONVENE

Mayor/Chairman Kennedy reconvened the meeting at 7:58 p.m.

PUBLIC HEARINGS:

17. DEVELOPMENT AGREEMENT AMENDMENT, DAA-99-04: EAST DUNNE-MORGAN MEADOWS

Council Member Chang stepped down from discussion of this item due to a conflict of interest.

Director of Community Development Bischoff informed the City Council that the applicant is requesting that this item be continued to December 12, 2001 as he could not be in attendance this evening.

Mayor Kennedy opened the public hearing. No comments were offered.

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council, on a 4-0-1 vote with Council Member Chang abstaining, **Continued** the public hearing for this item to December 5, 2001 at the request fo the project proponent.*

Council Member Chang resumed her seat on the dias.

18. DEVELOPMENT AGREEMENT APPLICATION DA-01-07: MISSION VIEW-DIVIDEND - Ordinance No. 1535, New Series

Director of Community Development Bischoff presented the staff report.

Mayor Kennedy opened the floor to public comment.

Dick Oliver requested that the City Council amend page 7 of the development agreement relating to paragraph 14.l(ii) that requires him to pay 40% of the BMR fee. He noted that this is an ongoing project and that he has been accruing the BMR percentages as a project. He stated that phases I and II consisted of 57 units with the installation of 6 BMR units. Phases III and IV consist of 54 units with the installation of 6 BMR units. Therefore, this project is ahead of the 10% BMR requirement. He informed the City Council that the entire project is planned so that when it is completed, it will have 10% BMR housing for the total project. He indicated that any given phase of the project may be over or under the percentage slightly but that the project would achieve the 10% BMR requirement. It was his belief that the project is ahead in the game at this time with regards to BMR commitments. He requested a refund of the fee when there is an over build of BMR units in a future phase.

No further comments being offered, the public hearing was closed.

Mr. Bischoff stated that he was not certain about the provision. He would support amending the development agreement to state " . . . as necessary or determined by staff prior to the issuance of a building permit."

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Waived** the Reading in Full of the Development Agreement Ordinance No. 1535, New Series.*

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Chang, the City Council **Introduced** Ordinance No. 1535, New Series, by Title Only as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING OF A DEVELOPMENT AGREEMENT, DA-01-07 FOR APPLICATION MP-00-12: MISSION VIEW-DIVIDEND (APNs 728-32-001, 002, 003 & 728-33-001), amending Paragraph 14 l(ii) to read: "The Property Owner agrees to pay 40 percent of the per unit cost of the standard housing mitigation fee prior to the issuance of building permits for the project, **if determined to be required by the Planning Manager and City Attorney.**" by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

19. DEVELOPMENT AGREEMENT APPLICATION DA-01-06: COCHRANE - COYOTE ESTATES - Ordinance No. 1536, New Series

Director of Community Development Bischoff presented the staff report.

Mayor Kennedy opened the public hearing. Dick Oliver stated his concurrence of staff's recommendation. No further comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Waived** the Reading in Full of the Development Agreement Ordinance No. 1536, New Series.*

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council **Introduced** Ordinance No. 1536, New Series, by Title Only as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT, DA-01-06 FOR APPLICATION MP-00-22: COCHRANE-DIVIDEND (APNs 728-34-003; 728-32-001, 002, 003; AND 728-35-008, 009, 010) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

20. ZONING AND DEVELOPMENT AGREEMENT APPLICATIONS ZA-01-10/DA-01-03/EA-01-26: E. CENTRAL - MORGAN LANE (APN 726-28-001, 726-28-002, 726-20-003) - Ordinance Nos 1537 and 1583, New Series

Director of Community Development Bischoff presented the staff report. He indicated that the Planning Commission has reviewed the application. He stated that the Planning Commission expressed concern regarding the location of the duet lots, noting that they have been changed. He said that both the Planning Commission and staff recommend City Council approval of the applications. In response to Council Member Tate's question as to why the Planning Commission requested that lots 31 and 32 be split, Mr. Bischoff indicated that these lots were not located on corner lots.

Council Member Tate noted that the Planning Commission minutes reflect a concern the Planning Commission had regarding an inconsistency with the General Plan. He requested that staff explain why the project was not consistent with the General Plan.

Mr. Bischoff stated that it was his understanding that the issue dealt with a policy that was adopted as part of the new general plan that deals with small lot, single family development. He indicated that a policy was added to the General Plan that allows for a certain number of detached single family homes in an R-2 zone on smaller lots and that this policy would allow the construction of affordable housing. It was his belief that the policy states that no more than 25% detached homes would be allowed and would be subject to development of a zoning ordinance that would provide for this provision. It was his understanding that the concern had to do with the number of attached units that can be built in a single family zone. He clarified that the policy does not address this issue and that the policy deals with the number of detached homes in a multi family zone. In response to Council Member Carr's question, he stated that the duet units were not relocated elsewhere in the subdivision.

Mayor Kennedy opened the floor to public comment. Carolyn Hipp, project manager, Warmington Homes, indicated that she would answer any questions that the City Council may have. No further comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Approved** the Mitigated Negative Declaration.*

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council unanimously (5-) **Waived** the Reading in Full of the Residential Planned Development (RPD) Ordinance No. 1537, New Series.*

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Carr, the City Council **Introduced** Ordinance No. 1537, New Series, by title only as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT TO ESTABLISH A PRECISE DEVELOPMENT PLAN FOR A 41-UNIT SINGLE-FAMILY PROJECT ON AN 18-ACRE SITE LOCATED ALONG THE NORTH AND SOUTH SIDES OF EAST CENTRAL AVENUE-WEST OF BUTTERFIELD AND EAST OF SERENE DRIVE (APN 726-28-001, 726-28-002, AND 726-20-003) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Waived** the Reading in Full of the Development Agreement (DA) Ordinance No. 1538, New Series.*

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council **Introduced** Ordinance No. 1538, New Series, by Title Only as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING DEVELOPMENT AGREEMENT APPLICATION DA-01-03 FOR APPLICATION MP-00-12: CENTRAL-WARMINGTON (APNs 726-28-001, 002 & 728-20-003) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

OTHER BUSINESS:

21. LOCAL LAW ENFORCEMENT BLOCK GRANT

Captain Sullivan presented the staff report. Mayor Kennedy opened the floor to public comment. No comments were offered.

Actions: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Authorized** City Manager to Apply for and Accept a Local Law Enforcement Block Grant in the Amount of \$10,070; 2) **Accepted** the Spending Plan as Presented; 3) **Appropriated** \$1,119 in Unallocated Reserves as Grant Matching Funds; 4) **Authorized** the Transfer of \$11,189 in Fiscal Year 01/02 from the Law Enforcement Block Grant Fund (205) to the General Fund (010); and 5) **Appropriated** \$11,189 in Fiscal Year 01/02 for Specific Grant Expenditures.*

22. SUPPLEMENTAL LAW ENFORCEMENT FUND

Captain Sullivan presented the staff report. Mayor Kennedy opened the floor to public comment. No comments were offered.

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Approved** the Fiscal Year 00/01 Spending Plan for Supplemental Law Enforcement Funding Program.*

Action: *By consensus, the City Council **agreed** to consider agenda item 25 at this time.*

25. SITE MASTER PLAN FOR SPORTS AND AQUATICS COMPLEX

Recreation Manager Spier presented the staff report.

Mayor Kennedy opened the floor to public comments. No comments were offered.

Mayor Pro Tempore Sellers noted that the master plan is a preliminary and broad-based study. He agreed that the solar issue should be considered in the broadest sense possible.

Mayor Kennedy stated that an issue has been raised recently in the Morgan Hill Times that the City is not looking at operating and maintenance cost. The City Council believes that it is essential that plans are in place to operate and maintain any public facility before proceeding. He said that the Council's process is very deliberate to ensure that the City does not get in over its head.

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Chang, the City Council unanimously (5-0) **Authorized** the City Manager to Enter into an Agreement with Beals Companies for Site Master Plan Services for the Sports and Aquatics Complex in an Amount Not to Exceed \$25,000, with the stipulation that staff looks at energy conservation measures.*

City Manager Tewes indicated that the City Council has adopted a policy that stipulates that the City

would not proceed with the construction of a project without first identifying its operation and maintenance costs. He stated that at the City Council meeting of November 28, the City Council will be receiving a preliminary report on the operation and maintenance costs, looking at business and operating models for the community recreation center.

23. CONTRACT FOR GRANTWRITING AND DEVELOPMENT SERVICES

Assistant to the City Manager Eulo presented the staff report. He informed the City Council that he misread the contract and stated that the guarantee comes into effect at the 24-month period and not at 10-months. Subsequently, the amount of money to be expanded when the guarantee activates is \$90,000, not the \$45,000 listed in the staff report. He clarified that at the end of the two-year period of the contract, if the City has not received a benefit of \$500,000 from their activities, Randall Funding would continue to work on behalf of the City until they have reached the guaranteed amount. He said that this is all predicated on the City's approval of their applying for \$1.75 million in grant funds that will be identified. He stated that Don Duncan is in attendance and has agreed to discuss working with the city toward a library grant.

Council Member Tate inquired as to the types of funds Randall Funding has applied for. He asked if this firm will be looking for general funds or will they be looking for specific funds that will go toward specific city funds? He asked if there is any prioritization or targeting? Mr. Eulo responded that most grant opportunities are targeted for one reason or another as there are not a lot of programs in place to give general fund support to a city. However, there may be projects that the City may be using general funds that could be potentially grant funded, shifting general funds for other purposes.

Mayor Pro Tempore Sellers stated that he had some apprehension when the concept first came before the Legislative Committee and indicated that his questions were answered. He said that there were two aspects that are critical that the firm will evaluate: 1) identifying what the community is and to determine if there are some specific opportunities in terms of grants; and 2) the City's needs that may be identified. He said that the City may not want a firm pursuing grants in particular areas that have not been identified as critical needs. He said that library funds would be a source of funding where another community may not need these funds but that these funds are critical for the City. He said that there may be an opportunity to apply for grants in conjunction with a non profit/entity(ies) in order to be eligible for grant funding.

Don Duncan, chief operating officer for Randall Funding and Development, indicated that public safety is a big budget item for almost every local government, noting that approximately 40-60% of budgets go toward public safety. He stated that there are funding opportunities that can be secured to buy mobile data terminals and computer-aided dispatch and geographic information systems, records management systems, jail management system, among other items that city government frequently turns to their general funds to pay for. He stated that his firm has had unprecedented success in attaining these types of funding and that his firm impacted funding opportunities. He identified the grants that his firm was able to secure and indicated that his firm has expertise in public safety, parks and recreation opportunity, economic development, infrastructure issues, education, environmental issues and library competitive opportunities that can be pursued on the City's behalf. He said that his firm only applies for funding that will help move the city toward its goals. He stated that his firm seeks either federal or state funding sources, depending on the client. He indicated that

bigger dollars exist at the federal level. He said that Proposition 14 is a funding opportunity for libraries. Should the City pursue this funding, it can be asking for a significant amount of amount money for bricks and mortars to build a library of approximately \$6-8 million. In response to Council Member Chang's question, Mr. Duncan felt that there are a lot of funding opportunities despite today's economy.

Council Member Carr inquired about the partnership opportunities between the City and non governmental organizations within the community. He stated that he would be interested in having the City pursue joint funding opportunities. He asked if this is typically done by Randall's group and whether this joint venture has been successful in other communities.

Mr. Duncan responded that these opportunities exist and that there has to be collaborative efforts, including interdepartmental and community support in the applications. He said that there are funding situations where the City would not be an eligible applicant. He indicated that his firm would pursue these funding opportunities, if so directed by the City, and it makes sense to do so. In order to make this relationship successful, there has to be a need and that it is important that there be a proactive and aggressive attitude toward getting some of these dollars.

Council Member Chang inquired as to the types of funding that is foreseen that the City can attain other than library funds?

Mr. Duncan responded that funding will come out of the assessment process. It is in the focus meeting that his firm will sit down with the leaders/departmental representative in order to understand priorities. He foresees funding opportunities in terms of economic development; parks and recreation, library, public safety, and law enforcement are opportunities that his firm can help the City with. He indicated that his strategic funding report would contain specific answers. He indicated that his firm is interested in a long term relationship, noting that the contract with the City would be for two years but would like to work with the City for 10-20 years. He felt that his firm can enhance the City's funding efforts. He addressed the ongoing assessment process throughout the contract period.

Mayor Pro Tempore felt that it would be a great opportunity to partner with the Randall firm, especially during these economic times.

Council Member Carr recommended that community public/private partnerships be thoroughly researched when doing the analysis. He requested that this be included in the action being taken this evening.

Council Member Chang recommended that at 10 months, the City be able to review the contract to see where the City stands.

Mayor Pro Tempore Sellers stated that evaluating the needs of the City and funding process cannot be achieved in a ten-month period. He felt that a two-year period is a reasonable time frame to review the contract. If Randall ends up with \$400,000 that the City received at the end of the two-year period, they would continue to work for the City without getting paid until they got to the \$500,000 mark. This is where the guarantee ties in.

Council Member Chang noted that some contracts contain a mutually exclusive clause that would allow discontinuation of services at each parties option.

Mr. Eulo clarified that the City is not tied to living with the agreement for two-years if the City is not happy and that the guarantee does not take effect until the two-year point. He stated that the City has the right to terminate, with notice, at any time as the City's standard consultant agreement allows for this.

Council Member Tate informed his fellow Council Members that Ann Marie Gold, the City's library contract consultant, will be with the City through the end of this month, as she has accepted a chief librarian position with the City of Sacramento.

City Manager Tewes stated his appreciation of Mr. Duncan's offer to assist the City with the library grant but recommended that the contract be written so that the library grant is not counted against the guarantee.

Mayor Kennedy noted that the City already budgeted funds for librarian consultant services and the City is now considering committing additional funds. He felt that this is replacing some of the funding already being expended.

Council Member Tate would not approach budgeting funds in the manner being addressed by Mayor Kennedy as this is the first opportunity that the City has had to discuss this issue with Mr. Duncan.

Mr. Eulo informed the City Council that the City will still need to hire a librarian consultant to assist the City with the needs analysis and the extensive research that will be necessary for the library grant. This is not something that Randall Funding is in a position to do at this time.

Actions: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council unanimously (5-0): 1) **Appropriated** \$90,000 from The General Fund Reserve, and 2) **Authorized** The City Manager to Execute a Contract with Randall Funding and Development Not to Exceed \$90,000 Subject to Final Approval of Form by the City Attorney.*

24. CITY CLEANUP ACTIVITIES

Assistant to the City Manager Eulo presented the staff report and indicated that the next Morgan Hill Beautification Day event will be scheduled on Saturday, April 20, 2002 to coincide with Earth Day Activities.

Council Member Tate stated his support of moving the cleanup day to the spring.

Mr. Eulo requested Council direction regarding the amount of emphasis it would like to place on litter lot enforcement activities. He informed the City Council that the Municipal Code indicates that the City has the authority to require property owners to keep their lots litter free. However, this is a code enforcement issue and that it would be unpopular to go aggressively after lot owners as they are not usually causing litter but simply a by product of owning the property. He said that it would take a

lot of time for the code enforcement officers to be focusing his efforts in this area and would take away from his other activities.

Director of Community Development Bischoff informed the City Council that the highest priority for code enforcement is health and safety issues. The next in priority would deal specifically with complaints received, most of which deal with boats, trailers, illegal signs, inappropriate use of property, etc.

Council Member Chang reminded the City Council that there is another code enforcement issue coming up relating to storage of boats and trailers. She recommended that code enforcement be deferred until this issue comes before the City Council for direction.

Mayor Pro Tempore Sellers felt that action should continue on a complaint basis. However, as part of the Earth Day Clean Up activities, the City uses the opportunity to identify and report problem areas. He noted that a few vacant lots are owned by non resident owners who do not visit their properties or are unaware that a problem exists. He did not believe that it should be a burden on the community to clean up vacant lots. He recommended that those most onerous and out of town property owners' cases be pursued. This would result in a limited amount of code enforcement activity.

Mayor Kennedy noted that it is often in areas where there is a fast food or eating establishment that individuals walk out with wrappers and papers that lead to the problem. He recommended that this issue be addressed.

Council Member Carr stated that he was disappointed because he was with a group of volunteers who conducted litter clean up along Monterey Road. His group picked up litter on privately owned property and bottles and cans in front of liquor stores, including trash directly associated with the various business. He noted that there are a lot of vacant lots in Morgan Hill which are owned and held for investment purposes. He felt that there is a responsibility to owning property in Morgan Hill, whether you live here or whether you see it or not. He felt that this was a high priority issue for the City's code enforcement officer. He did not support asking volunteers to go out and clean up private property. It was his hope that business owners in Morgan Hill would have pride in ownership of their business and the responsibility that goes along with ownership and maintaining store fronts. He felt that City volunteers should spend time cleaning up parks, planting trees, painting over graffiti, fixing swings, etc., instead of having to spend time picking up bottles and cans in front of liquor stores, cigarette butts or other debris left in open lots that are clearly on private property. He did not believe that this would be an appropriate use of funds based on the current budget situation. He felt that there were other things that the City could do such as issuing a notice to business owners to address this issue as a high priority for the City Council and the community. He is hoping that private business owners would want to be partners in clean up efforts.

Council Member Chang asked whose responsibility it would be to clean up private property when others litter these lots? She felt that this was an issue that needs to be discussed.

Mayor Kennedy stated that the problem is with individuals who are careless about litter. Therefore, it is important to conduct a litter education campaign because it is everyone's responsibility. He felt

that some responsibility falls upon the City for not providing enough trash containers, or perform street sweeping adequately.

Council Member Tate agreed that this is a difficult problem. He stated that he was having difficulty with the absentee owners of vacant lots. He stated that he did not have answers to the problem but noted that the City has in place an "Adopt a Park" program and asked if there would be businesses willing to adopt some of the lots that are of a particular problem. He did not support the \$20,000 expenditure to be applied toward this effort but asked if a sign can be installed that reads "Take Pride in Morgan Hill - Put Your Trash Where it Belongs" on lots that are of nuisance to increase pride in the community.

Mr. Eulo informed the City Council that the requested \$20,000 would be used to conduct a litter prevention awareness campaign, focusing on school children and instilling community pride. He indicated that the \$20,000 is not proposed to be general fund expenditures but an expenditure from the fund balance of the Solid Waste Management Program. He stated that the vast majority of activities were on private property on the Clean Up Day. He stated that the City could be creative in reminding property owners of their obligations under the Municipal Code without the need of engaging code enforcement activities. Further, the City could try to facilitate payment to a non profit organization to keep lots of absentee owners relatively litter free. He indicated that the cost for the recycling efforts to achieve the goals set by the City Council equated to \$50,000-60,000 per year.

Council Member Carr recommended that the City use its Municipal Code and remind property owners of what is contained in the code today. He recommended that the City talk about the success of the City's Beautification Day, sending this information to property owners. He felt that the City and volunteer citizens have spent a day cleaning up private properties. He felt that the property/business owners should clean up their properties once or twice a year.

Mayor Kennedy recommended that a beautification award be considered for property/business owners who maintain their properties that would not be costly. He indicated that he would favor some funding to implement such a program, as a minimum.

Council Member Chang stated that she would support such programs should the City have funds available and not facing budget cuts up to 15% from the State. She noted that the City Council has directed staff to make a 5% budget reduction, looking at another 10% budget reduction in the future. Therefore, she would not support appropriation of funds at this time. She felt that the City needs to maintain a frugal attitude.

Mayor Pro Tempore Sellers did not recommend approval of the appropriation of \$20,000 at this time but that the City Council provide staff with the latitude to come up with a combination of solutions. Prior to the April 20 Beautification Day, staff can return with costs to implement a litter abatement campaign and identify the direct benefits.

Actions: *By consensus, the City Council **Received and Filed** Report on City Beautification Day. **No Action Was Taken** on this item.*

FUTURE COUNCIL-INITIATED AGENDA ITEMS:

No items were identified.

ADJOURN TO CLOSED SESSION

Mayor/Chairman Kennedy adjourned the meeting to closed session at 9:39 p.m.

RECONVENE

Mayor/Chairman Kennedy reconvened the meeting at 10:45 p.m.

CLOSED SESSION ANNOUNCEMENTS

City Attorney/Agency Counsel Leichter announced that the City Council/Agency Commission took the following actions: 1) Approved the City's defense in the Hacienda Valley Mobile Estates and 2) approved the representation of Don Lincoln with the law firm of Endemann, Turek, Lincoln & Heater to defend the city in the lawsuit.

ADJOURNMENT

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 10:47 p.m.

MINUTES RECORDED AND PREPARED BY:

Irma Torrez, City Clerk/Agency Secretary